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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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KACVINSKY LLC C/O INTELLEVATE P.O. BOX 52050 MINNEAPOLIS, MN 55402			EXAMINER KANG, INSUN	
			ART UNIT 2193	PAPER NUMBER
			MAIL DATE 06/11/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/814,374	Applicant(s) PERI ET AL.	
	Examiner INSUN KANG	Art Unit 2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 7-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 7-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responding to RCE amendment filed on 5/21/2008.
2. Claims 1-5 and 7-20 are pending in the application.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 11-14 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claims 11-14 are non-statutory because they are directed to an apparatus that does not have any physical structural elements. The specification states that trace buffer may be a software buffer (0028). With no other structure in the independent claim to rely on, the alleged “apparatus” of the claims turns out to be a computer program per se, and, thus, does not fit within the definition of the categories of patentable subject matter set forth in § 101. Therefore, the claim is non-statutory.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-5, 7, 8, 11, 13-15, and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ball et al. ("Efficient Path Profiling," IEEE, pages 1-12, 1996) hereafter Ball in view of Alexander et al. (US 6,553,564) hereafter Alexander.

Per claim 1:

Ball discloses:

- generating a trace for a subset of program instructions formed from a set of program instructions, with said trace comprising a path identifier value, start address, and end address (i.e. "The path profiling algorithm first labels edges in a DAG with integer values, such that each path from the entry to the exit of the DAG produces a unique sum of the edge values along that path," page 4, right col., second paragraph) ;
- storing said trace in a trace buffer (i.e. "a trace buffer that records branch outcomes," page 4, left col., second paragraph);
- retrieving said trace from said trace buffer and reproducing said subset of program instructions using said trace (i.e. "To recreate a path profile from the path counters recorded at run time, it is necessary to map from integer representing a path to the path itself...the reconstructed path," page 6, right col., 3.5 Regenerating a Path section, lines 1-11).

Ball discloses that said subset of program instructions comprises a function (i.e. "the execution of a local portion of a program, such as routine," pages 1, right col., paragraph 1). Ball does not explicitly teach that a number of traces stored in the trace buffer is proportional to a number of functions in the program instructions. However, Alexander teaches it was known in the pertinent art, at the time applicant's invention was made, to

determine the number of methods in a trace record by setting a counter (i.e. Fig. 8; col. 12, lines 5-25). It would have been obvious for one having ordinary skill in the art to modify Ball's disclosed system to incorporate the teachings of Alexander. The modification would be obvious because one having ordinary skill in the art would be motivated to obtain profile information from reduced trace records based on the number of functions.

Per claim 2:

Ball further discloses:

- receiving an endpoint program instruction for said subset of program instructions (i.e., page 2, right col., lines 6-9);

- generating said path identifier value and end address for said subset of program instructions (i.e. page 2, right col., lines 10-13);
- retrieving said start address from a program counter register (i.e. page 2, right col., second paragraph lines 1-6)

generating said trace using said path identifier value, start address and end address (i.e. page 5, left col., section 3.2 Compactly Representing Paths with Sums, lines 1-6).

Per claim 3:

Ball further discloses:

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- initializing a path identifier register, with said path identifier register to store said end address and said path identifier value (i.e. page 6, section 3.4 Instrumentation, second paragraph)
- assigning each unconditional branch instruction for said set of program instructions an unconditional partial path value and an unconditional offset value (i.e. page 3, left col., third paragraph, lines 8-12)
- and assigning each conditional branch instruction for said set of program instructions a taken branch partial path value, an untaken branch partial path value, and a conditional offset value (i.e. page 2, right col., first paragraph, lines 5-8, 14-15).

Per claim 4:

Ball further discloses:

- receiving a branch and determining whether said branch instruction is a conditional branch instruction or unconditional branch instruction (i.e. page 2, right col., first paragraph, lines 5-8)
- incrementing said path identifier value with said unconditional partial path value and said end address with said unconditional offset value if said branch instruction is an unconditional branch instruction (i.e. page 6, section 3.4 Instrumentation, second paragraph; page 2, Figure 2)
- incrementing said path identifier value with said taken branch partial path value and said end address with said conditional offset value if said branch instruction is a conditional branch instruction that was taken; and incrementing said path identifier

value with said untaken branch partial path value and said end address with said conditional offset value if said branch instruction is a conditional branch instruction that was untaken (i.e. “Taking a conditional branch narrows the set of potential paths and corresponds to a transition to a new state,” page 2, right col., lines 5-6; “At the end of the loop body...register r holds the index to increment an array of counters,” page 2, right col., second paragraph lines 3-6).

Per claim 5:

Ball further discloses:

- comprising initializing said path identifier register prior to processing another conditional branch instruction (i.e. “initializing path register $r[r=0]$ in the ENTRY vertex,” page 6, right col., 3.4 Instrumentation, second paragraph, lines 2-3).

Per claim 7:

Ball further discloses:

- wherein said path identifier and end address each comprise 32 bits (i.e. “the states can be represented as 32-bit integers,” page 3 right col., section 1.3, second paragraph, line 9).

Per claim 8:

Ball further discloses:

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- wherein said conditional branch instruction and said unconditional branch instruction each comprise 32 bits (i.e. “the states can be represented as 32-bit integers,” page 3 right col., section 1.3, second paragraph, line 9).

Per claims 11 and 13, they are the apparatus versions of claim 1, respectively, and are rejected for the same reasons set forth in connection with the rejection of claim 1 above.

Per claim 14:

Ball discloses:

- a path identifier register (i.e. page 8, section 5.1 Registers, “a local register...to hold the current path,” lines 1-4)
- a program counter register (i.e. counter, page 6, left col., 3.4 Instrumentation, second paragraph, line 5)
- and a path identifier generator operatively coupled to said path identifier register and said program counter register, said path identifier generator to receive an endpoint program instruction for said subset of program instructions, to generate said path identifier value and end address for said subset of program instructions using said path identifier register, to retrieve said start address from a program counter register, and generate said trace using said path identifier value, start address and end address (i.e. “initializing path register $r[r=0]$ in the ENTRY vertex,” page 6, right col., 3.4 Instrumentation, second paragraph, lines 2-3; page 5, left col., section 3.2 Compactly Representing Paths with Sums, lines 1-6; page 2, right col., lines 10-13).

Per claims 15, 17, and 18, they are the wireless system versions of claims 11, 13, and 14, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 11, 13, and 14 above.

Per claims 19 and 20 they are other method versions of claims 11, 13, and 14, respectively, and are rejected for the same reasons set forth in connection with the rejection of claims 11, 13, and 14 above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 9, 10, 12, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ball et al. ("Efficient Path Profiling," IEEE, pages 1-12, 1996) hereafter Ball, in view of in view of Alexander et al. (US 6,553,564) hereafter Alexander, and further in view of Mann (US Patent 6,094,729).

Per claim 9:

Ball does not explicitly teach that said conditional branch instruction and said unconditional branch instruction further comprise an operation code value to identify a type of instruction. However, Mann teaches such an operation code value was known in the pertinent art, at the time applicant's invention was made, to indicate the data type (i.e. col. 3 lines 3-9). It

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would have been obvious for one having ordinary skill in the art to modify Ball's disclosed system to incorporate the teachings of Mann. The modification would be obvious because one having ordinary skill in the art would be motivated to indicate the data type to identify different types of instructions fast (i.e. col. 3 lines 3-9).

Per claim 10:

Ball discloses that said trace buffer comprises N entries (i.e. "a trace buffer that records branch outcomes," page 4, left col., second paragraph). Ball does not explicitly teach moving traces from said trace buffer to another storage location after storing N entries. However, Mann teaches it was known in the pertinent art, at the time applicant's invention was made, to move trace data into another storage if desired (i.e. col. 24 lines 5-15). It would have been obvious for one having ordinary skill in the art to modify Ball's disclosed system to incorporate the teachings of Mann. The modification would be obvious because one having ordinary skill in the art would be motivated to move the trace data into memory when the trace buffer is not available for storing the traces (i.e. col. 24 lines 5-15).

Per claim 12, this claim is the apparatus version of the claimed method discussed in claim 10, wherein all claim limitation also have been addressed and/or covered in cited areas as set forth the above.

Per claim 16, this claim is the system version of the claimed method discussed in claim 10, wherein all claim limitations also have been addressed and/or covered in cited areas as set forth the above.

Response to Arguments

10. Applicant's arguments with respect to claims 5/21/2008 have been considered but are moot in view of the new ground(s) of rejection.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to INSUN KANG whose telephone number is (571)272-3724. The examiner can normally be reached on M-F 8:30-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lewis A. Bullock can be reached on 571-272-3759. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Insun Kang/
Examiner, Art Unit 2193